

**TESTIMONY OF WILLIAM D. DURAND
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The Energy & Technology Committee

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**Senate Bill 416: An Act Concerning The Mergers and Acquisitions of The Holding
Companies of Certain Public Utility Companies**

My name is Bill Durand and I am the Executive Vice President and Chief Legal Counsel for the New England Cable & Telecommunications Association, Inc. (NECTA). NECTA represents substantially all cable television operating and programming companies that serve Connecticut and the other five states in the region.

The cable industry respectfully opposes SB 416 because it would upset long-standing federal standards and procedures for transferring cable systems that have served Connecticut well for decades.

Federal Law Establishes a Comprehensive Regulatory Scheme Over the Cable Television Industry.

The cable television industry is uniquely and pervasively regulated by the Federal Communications Commission (47 U.S.C. §§ 521 et seq. and 47 C.F.R. Part 76). Congress has specifically preempted broad areas of cable communications to establish “a national policy concerning cable communications.” 47 U.S.C. §521(1), and the federal Cable Act limits local authority in this area (47 U.S.C. §521(3)).

Most relevant to this Committee’s consideration of SB 416, the Cable Act established specific standards governing local review of franchise transfers and mergers (47 U.S.C. §537), and the FCC subsequently implemented these standards in its regulations (Implementation of Sections 11 and 13 of the Cable Television and Competition Act of 1992, Report and Order, 8 FCC Rcd 6828 ¶85 (1993) (“1993 Order”); Implementation of Sections 11 and 13 of the Cable Television and Competition Act of 1992, Memorandum Opinion and Order, 10 FCC Rcd 4654, 4676 ¶¶50-53 (1995) (“1995 Memorandum Opinion”); 47 C.F.R. §76.502).

However, the CATV merger conditions in SB 416 directly conflict with the federal franchise transfer review standards, in which the FCC determined that an assessment of a proposed transferee’s legal, technical, and financial qualifications provides a sufficient basis to consider the transfer or merger of cable franchises (1995 Memorandum Opinion ¶55). To implement this review process, the FCC created a franchise transfer form to and associated procedure for the review of a transferee’s legal, technical and financial qualifications (FCC Form 394).

Contrary to These Federal Transfer Limits, SB 416 Establishes Wide Ranging Merger Approval Standards That are Entirely Unrelated to the Legal, Technical and Financial

Qualifications of the Transferee.

For example, in assessing a cable television merger, SB 416 would require analysis of the merger's impact on overall state employment levels, customer rates and a nationwide analysis of ratepayer merger benefits. Each of these proposed review standards fall outside of the federal transfer standards as they are unrelated to the assessment of the transferee's relevant qualifications.

SB 416's Attempt to Regulate Cable Rates is Specifically Preempted by Federal Law.

One of the primary focuses of the proposed SB 416 review is on the impact of a transfer or merger on cable television customer rates and national ratepayer comparisons.

The Cable Act and FCC regulations specifically deregulate rates for cable services, other than basic cable service, which is also deregulated where there is effective competition. This deregulation extends to all rates charged for non-basic tiers of cable service, premium channels, video-on-demand, pay-per-view events and any other non-basic cable offering (47 U.S.C. §543; 47 C.F.R. § 76.901 et seq). The Cable Act preempts any state or local law that conflicts with its provisions (47 U.S.C. §§543(a), 556(c)).

Moreover, the FCC has specifically preempted attempts to regulate cable rates as part of the cable franchise transfer process (1993 FCC Order ¶ 39, n. 38 ("It should be emphasized, however, that in exercising their transfer jurisdiction, franchising authorities may not seek to circumvent the Commission's authority over rate regulation, franchise fees or other matters.")).

Thus, the broad attempt by SB 416 to regulate cable customer rates has been specifically foreclosed by the FCC.

SB 416's Proposed Regulation of Cable Systems is Directly Contrary to the State's Interest In Promoting Broadband Investment and Deployment.

This state proposal to disrupt the established Federal practice with respect to transactions involving the transfer of cable systems could hinder investment in Connecticut's communications technology infrastructure and state job growth. Simply put, the acquisition of a Connecticut cable network today is synonymous with the acquisition of a private capital broadband network.

By way of background, at our own risk, the cable industry spurred a revolution in high-speed internet broadband investment starting in the last decade. The payoff has been more choice and value for Connecticut's consumers and a state of the art broadband network to help support the state's ability to compete in the digital economy.

Without a doubt, the private capital broadband assets housed in Connecticut are a competitive advantage that it enjoys over other states. In fact, the 2011 Connecticut Economic Review ranked the state the #2 most wired state in the country. In addition, a 2011 University of Massachusetts report, *Connecting Connecticut: Cable's Impact on the State's Economy*, found that since 2006 the state's cable companies invested over \$1 billion in capital improvements and grew

employment by more than 30% in Connecticut. Finally, according to the FCC, Connecticut's growth in high-speed cable broadband lines between the years 2005 - 2010 was 66.3%. Even when the overall economy slowed in the state, the trend in private capital investment by Connecticut's cable companies and growth in cable employment is clear.

In sum, because cable companies' network acquisitions in Connecticut have a proven track record of contributing to the state's economy through investments that enhance the state's technology infrastructure and grow jobs, and because there are long-standing federal procedures that have served the state well in this area, we would respectfully request that cable companies be exempt from the proposed new requirements proposed in SB 416.

Thank you.